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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,518	01/11/2002	Kenneth R. Spencer SR.	00-1303	8268

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/043,518

Applicant(s)

SPENCER ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10252004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20,21,23-25,27-34,39,40 and 42-58 is/are pending in the application.
- 4a) Of the above claim(s) 20,29-34,39 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21, 23, 24, 25, 27, 28, 40, 43-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10-25-2004
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Oct. 25, 2004 has been entered.

### ***Election/Restrictions***

2. Claims 20, 29-34, 39, 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on Nov. 8, 2004. The withdrawn claims have limitations drawn to the motor having a rotating shaft extending into the hollow cavity of the rod.

3. Applicant's election with traverse of Group II in the reply filed on Nov. 8, 2004 is acknowledged. The traversal is on the ground(s) that since the subject matter of claims 20, 33, 34, and 42-46 has already been searched that an undue would not be placed on the examiner. This is not found persuasive because extra searching is required since the embodiments show different structure.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 21, 23, 24, 25, 27, 28, 40, 43, 44, 45, 46-58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 21, 25, 40, 43, 47, and 51 all include limitations of the vibrating assembly such as the motor having a rotating shaft, an eccentric. However, the specification such as page 11, lines 9-13, which describe the second embodiment, does not recite any details of the vibrating means 44. Hence the specification does not support the recitations of these claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21, 23, 24, 25, 27, 28, 40, 43, and 46-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheperd in view of Yankaitis for substantially the same reasons stated in the last Office Action.

The patent to Sheperd shows a fishing rod having a rod portion 10, 12, a handle portion 14 with a hollow interior. Sheperd shows a vibrating assembly 16, 18, 20, 22 mounted

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within the handle assembly which when activated causes vibration to be initiated with the handle portion. Sheperd shows a power supply 18, 20 and a switch 32 or actuating means 32 associated with the handle portion. The patent to Sheperd shows a motor 16, but Sheperd does not show an eccentric mounted to the motor. The patent to Yankaitis shows a fishing rod having a vibrating assembly mounted on the rod portion adjacent the handle as shown in Fig. 2. Yankaitis shows a motor 32 with an eccentric 44, 46, 49 mounted to the motor and rotated by shaft 42 of the motor to effect vibration. The vibration is initiated within the housing. In reference to claims 21, 25, 40, 43, 46, 47, and 51, it would have been obvious to provide Sheperd with an eccentric as shown by Yankaitis to increase the vibrations generated. The location of the eccentric member 24 which is shown by Sheperd to be outside of the rod, but it would have been employ an eccentric inside the housing such as when combined with Yankaitis to increase the intensity of the vibrations. In reference to claims 23, 27, 44, 48, 52, Yankaitis shows a flywheel 44, 46, but it would have been obvious to employ a cam since the function is the same and no stated problem is solved. In reference to claims 24, 28, 45, 49, 53, 56, 58, Sheperd shows actuating means 32 associated with the handle portion for actuating the vibration assembly that is operable by a finger of a user. In reference to claims 50, 54, inherently vibrations of Sheperd in the rod handle effectuates vibrations of a fishing line coupled to the fishing pole. In reference to claims 55, 57, Sheperd and Yankaitis do not show a protruding member extending from the handle with the actuating means mounted on the protruding member. However, the examiner takes Official Notice that protruding members are old and well known on

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casting rods for supporting a finger of a user. The location of the actuating means is a matter of design choice since the function is the same and no stated problem is solved. Also note that a rearrangement of the location of parts has been held to be obvious. See *In re Japikse*, 86 USPQ 70.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR